

**DEPARTMENT OF STATE REVENUE**

**REVENUE RULING ST 96-14**

**JANUARY 7, 1997**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

Sales/Use Tax - Sale of Telephone Services and Rental of Telephone Sets

Authority: IC 6-2.5-4-6, IC 6-2.5-2-1, IC 6-2.5-4-10, IC 6-2.5-5- 8, IC 6-2.5-1-1

The taxpayer requests the Department to rule on the application of sales/use tax to the sale of telephone services and the rental of telephone sets.

**STATEMENT OF FACTS**

The taxpayer is a partnership which provides shared tenant services. The taxpayer purchases telephone services from the local BOC vendors and national long distance companies and, in turn, resells these services to its customers. The taxpayer, also, rents telephone sets to its customers. The taxpayer entered Indiana in January of 1993 by acquiring another corporation.

**DISCUSSION**

IC 6-2.5-4-6 provides, in relevant part, "A person is a retail merchant making a retail transaction when the person furnishes or sells an intrastate telecommunication service." IC 6-2.5-4-6, also, defines "telecommunication services" as "the transmission of messages or information by or using wire, cable, fiber-optics, laser, microwave, radio, satellite, or similar facilities." Here, for the taxpayer to statutorily sell intrastate telecommunication services the taxpayer must transmit messages or information by using wire, cable, fiber-optics, etc. The taxpayer does not transmit messages or information by using wire, cable, fiber-optics, etc., but, rather simply purchases telecommunication services from the providers (local BOC vendors and national long distance companies) and, in turn, permits customers to access the telecommunication services for a fee. The taxpayer, as a purchaser of intrastate telecommunication services, is required to pay sales/use tax on same pursuant to the above referenced IC 6-2.5-4-6 and IC 6-2.5-2-1. The fee charged by the taxpayer to its customers for access to the telecommunication services is not subject to sales/use tax as the taxpayer is not selling intrastate telecommunication services to its customers. IC 6-2.5-4-10 states that a person is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person. Sales/use tax is imposed on retail transactions made in Indiana as provided by IC 6-2.5-2-1. In the instant case, pursuant to the aforementioned statutes, the taxpayer's rental of telephone sets is subject to sales/use tax. IC 6-2.5-5-8 provides that the purchase of tangible personal property is exempt from sales/use tax if the person acquiring the property acquires it for rental or leasing in the ordinary course of his business without changing the form of the property. The taxpayer's purchase of telephone sets, therefore, is not subject to sales/use tax.

**RULING**

The Department rules that the taxpayer is not statutorily selling intrastate telecommunications services, hence, fees charged to customers for access to the telecommunication services are not subject to sales/use tax. Further, the taxpayer, as a purchaser of intrastate telecommunications service is required to pay sales/use tax on same.

The rental of telephone sets by the taxpayer to its customers is subject to sales/use tax, however, the taxpayer may purchase the telephone sets tax exempt.

It should be noted that if the taxpayer would bill its customers on a lump sum basis, i.e., a combined charge for the telecommunication services and the rental of the telephone set, the total lump sum billing would be subject to sales/use tax as provided by IC 6-2.5-1-1.

**CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

INDIANA DEPARTMENT OF REVENUE